

Fair Political Practices Commission
MEMORANDUM

To: Chairman Randolph and Commissioners Blair, Downey, Huguenin and Remy

From: Christopher Espinosa, Executive Fellow
John Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Subject: Adoption of Proposed Amendments to Regulation 18537 – Contribution Limits and Application to Repaid Loans

Date: May 18, 2006

I. EXECUTIVE SUMMARY

This project proposes amendments to regulation 18537 under the Political Reform Act (the “Act”),¹ relating to repaid loans and the term “election cycle,” which is currently featured in all three subdivisions of this regulation. The term “election cycle,” for purposes of this regulation, is not defined. Staff proposes amendments to this regulation in order to add clarifying language reflecting the Commission’s interpretation of section 82015 as applied to contribution limits and repaid loans, and of section 84211 as it relates to the contents of campaign statements.

At its April 13, 2005, meeting, the Commission held prenotice discussion on this project. Staff recommended the Commission delete the obsolete term “election cycle” (as used in Proposition 73 special elections) from this regulation, and replace it with language that conforms to changes that were brought about by the passage of Proposition 34. There was no public comment. The Commission did not express any concerns regarding the regulatory language presented and took action to move the proposed amendments to final adoption. Consistent with the Commission’s determination, staff noticed the proposed regulation through the Office of Administrative Law. Staff recommends adoption of the proposed amendments.

¹ Government Code sections 81000 – 91014. Commission regulations appear at title 2, sections 18109-18997, of the California Code of Regulations. All references are to the Government Code unless otherwise indicated.

II. REGULATORY AMENDMENTS

The Act currently provides that a loan and the forgiveness of a loan are both regarded as campaign contributions. (Sections 82015, 84216, and 85307.) As a result, the loan and the forgiveness of a loan may be counted as two contributions for purposes of contribution limits when, in fact, they constitute only one contribution. Under current law, loans that are forgiven are cumulated with other contributions made during a calendar year for purposes of determining if an individual or entity has qualified as a committee and for reporting purposes.

Regulation 18537 provides a limited exception to this rule for loans subject to the Proposition 34 contribution limits if the forgiveness of the loan is within the same “election cycle” as the original loan. Under such circumstances, the forgiveness of the loan is not considered an additional contribution. However, the term “election cycle,” for purposes of this requirement, is not defined.

To improve on the current language of regulation 18537, the first proposed regulatory amendment would add a new subdivision to state that this regulation is applicable to the contribution limits of chapter 5 of this title. This new subdivision is being inserted to clearly state the limitations of this regulation.

The proposed regulatory amendments would also delete the obsolete language of “election cycle,” which presently is in the three subdivisions of this regulation, and replace it with language that better conforms to current statutes. There are also some technical changes being proposed that seek to make the regulation more consistent with the current language and reporting requirements of the Act.

Staff’s prenotice memorandum had a thorough discussion of the issues and background on the proposed amendments to regulation 18537. (Prenotice Discussion of Amendments to Regulation 18537 — Contribution Limits and Application to Repaid Loans, Legal Division memorandum to Chairman Randolph and Commissioners, March 22, 2006.)

Under the Act, the definition of “contribution” includes loans made to the candidate or committee, except those received from a commercial lending institution in the regular course of business. (Sections 82015 and 84216.)

The first proposed amendment is to delete the first sentence in old subdivision (a) and replace it with new language providing that regulation 18537 is applicable only to loans received or made that are subject to the contribution limits of chapter 5 of this title. This change is recommended to make explicit in the regulation that which was implicit in the placement of the regulation in chapter 5, relating to contribution limits.² The new proposed subdivision (a) provides:

² Generally, reporting of contributions is covered in Chapter 4.

(a) ~~A loan, other than a loan specified in Government Code section 85307, constitutes a contribution and shall be subject to the contribution limits of Government Code sections 85301, 85302 and 85303. This regulation is applicable to loans received or made that are subject to the contribution limits of chapter 5 of this title.~~

The second proposed amendment would move the second sentence in former subdivision (a) to new subdivision (b). The new language indicates that the “[f]orgiveness of a loan ‘*made to a candidate or committee*’ (new language) shall not constitute an additional contribution ‘*from the lender*’ (new language) for purposes of the contribution limitations.” Newly proposed subdivision (b) provides:

(b) Forgiveness of a loan made to a candidate or committee ~~within the same election cycle in which it is made~~ shall not constitute an additional contribution from the lender for purposes of the contribution limitations.

The new language clarifies the entity that received the loan and from whom the additional contributions were obtained. Furthermore, the following obsolete language “*within the same election cycle in which it is made*” has been deleted.

The third proposed amendment — new subdivision (c) — would deal with the repayment of a loan. This section was formerly found in the old subdivision (b). The new proposed subdivision (c) provides:

~~(b)~~ (c) Except as prohibited by Government Code section 85316, repayment ~~Repayment~~ of a loan in whole or in part shall enable the lender, guarantor, endorser, or cosigner to make additional contributions to the same candidate or committee ~~during the same election cycle in which the loan is made~~ provided that the additional contributions, when combined with the outstanding balance of any loan from that contributor, do not result in a violation of the contribution limits.

The obsolete language “*during the same election cycle in which the loan is made*” has been deleted and added in its place is the following language, “*provided that the additional contributions, when combined with the outstanding balance of any loan from that contributor, do not result in a violation of the contribution limits.*” This language is being added to instruct the regulated community that they still have to abide by the existing campaign contribution limitations.

Also added to subdivision (c) is a statement that this subdivision will not supersede the ban on post-election fundraising by state candidates found at section 85316. These changes will make the regulation more consistent with the current requirements of the Act.

The fourth proposed amendment — new subdivision (d) — would deal with how loans received and repaid shall be reported. This language was formerly found in the old subdivision (c) and concerns special reporting rules applicable only to candidates and committees subject to contribution limits. The newly proposed subdivision (d) provides:

~~(e)~~ (d) Each loan received shall be reported as a contribution on the campaign report for the reporting period in which it was received regardless of whether it has been retired, forgiven, or remains outstanding in whole or in part. A candidate or committee which has repaid a loan, in whole or in part, and has received an additional contribution ~~from the lender during the election cycle in which the loan was made~~, shall ~~include~~ indicate on the campaign statement ~~for each period in which repayment is made a notation indicating~~ that the cumulative amount of the contributor's contribution has been reduced accordingly.

Staff has deleted the following outdated language “*during the election cycle in which the loan was made*” and “*for each period in which repayment is made a notation indicating.*” The language “*from the lender*” has been added to specify from whom the additional contribution was obtained. Further, the term “*cumulative*” has been added to precede “amount of the contributor’s contribution.”

Current reporting practices now require candidates to report on Form 460 the cumulative amount of contributions (including loans, loan guarantees, monetary and non-monetary contributions) received from the lender during the calendar year. Further, when the cumulative amount of a contribution has been reduced through the repayment of a loan, it is commonly reported in the memo section of electronically filed forms. The amendments made to subdivision (d) will keep the existing reporting requirements intact, but simply eliminate the obsolete reference to the election cycle. It is expected that the new language should clarify any confusion the regulated community had concerning the previous language and make the regulation more consistent with the scheme created by Proposition 34.

III. STAFF RECOMMENDATION

Staff recommends that the Commission approve for adoption the proposed amendments to regulation 18537 at the June 2006 Commission Meeting.

Attachments:

Attachment 1: Proposed amendments to regulations 18537